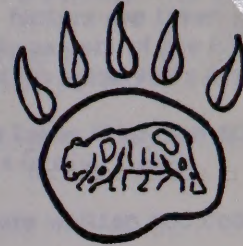




LAW IN ACTION

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Native Folklaw & the Modern System

Native Counselling
Services of Alberta

We were planted in this earth, put here by the Great Spirit in a good country, in a clean country, to love the country and to live with it. To work to survive so that people would love each other and work with each other so that they would live in harmony with the world.

These words were spoken by a Native elder talking about the basis for traditional Native justice. Traditional justice still has a powerful effect on the lives of many Native people in Alberta today, yet very little information about that system is available. When Native Counselling Services of Alberta tried to document some of this information, we found there were many differences between the traditional and modern justice systems.

Native Counselling Services collected hours of tape recordings, and the ideas the elders shared with us ranged from stealing to teaching children the differences between right and wrong.

A few brief examples of the kind of information we found, spoken in the elders' own words, are as follows:

- Many years ago, a man who is a good hunter and who like to work, used to own a couple of women. And if he likes another girl, and if he wants that girl, he would fight the man that owns her. That was the law in those days. Whoever won the fight was the one that owned the woman. No one was

allowed to take sides. Just the two had to fight each other. No sticks, no guns, no knives were used, just their bare hands. So when they fought together, one sometimes got killed because this was Indian justice, Indian killing they called it. And the one that survives the fight, well, he didn't do anything wrong. And that was about all, because there was no police.

- If a husband should catch his wife at adultery, the husband will not say anything. The wife will either cut her ears or hair off. When a man is caught with another man's wife, they are exposed to the tribe by the husband. By doing that, the tribe will recognize them and they'll be branded as adulterers. Sometimes they would leave the tribe on their own because they couldn't stand it. If a brother catches his sister fooling around, he won't say anything, or he'll just walk up to her and kill her. This is an embarrassment for the brother-in-law. No one will say anything about it.

- And sometimes it happened that someone would do something wrong, then he would be ashamed and he went away from the tribe. Maybe find another tribe in his journey somewhere. Same thing with a woman, some that did wrong, they'd sneak away from the camp and left for good, because they couldn't live with the system and they were ashamed of themselves.

Based on all the information gathered, a number of specific differences became quite apparent. The major ones are listed below:

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Native

- a) situational factors are important in considering the "offence".
flexible
present time orient.
- b) "punishment" is immediate.
- c) "laws" are verbally communicated. *verbal*
- d) the relevance of the "offence" to the welfare of the group determines the seriousness of the offence and punishment. *community*
- e) the Band only intervenes in individual disputes if the demands that are made are unresolvable or unreasonable. *non-intrusion*
- f) conformity is more important than retribution, etc. *anonymity vs individual*
- g) the "punishment" benefits both the victim and the group. *conciliatory*
- h) Justice is an integral part of the group's functioning and is understood by all.
- i) positive reinforcement and punishments are both prominent. *conciliatory*
- j) enforcers have positions and power through popular consensus. *consensus*

Modern

- a) sentencing is formalized, legislated and written in the various Acts and Codes. Situational factors are taken into account only as part of the Criminal Justice System personnel's discretion. *future*
- b) the process takes time, sometimes up to ten years in civil cases.
- c) most laws are written and codified. *written*
- d) the seriousness of the offence depends on current morals, on the value of property involved, or amount of physical harm to the victim. There are very few "system" offences -- treason, assaulting a police officer, obstructing justice and a few others. *indiv.*
- e) the system is immediately involved.
- f) conformity is usually irrelevant except as an influence on the criminal justice system personnel's discretion. *vs*
- g) punishment seldom benefits the group, and the victim only if restitution is ordered. *adversarial*
- h) Justice is a separate institution, completely understood only by specialists.
- i) punishments are emphasized. *adversarial*
- j) enforcers are hired, do not depend directly on popular support and do not always have popular consensus on actions. *majority*

The Native "traditional" justice system worked effectively for many thousands of years and there are many aspects of it which may be valuable for today's justice system to consider. □

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